

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 12/12/2016
JUDICIAL OFFICER: Kevin DeNoce

EVENT TIME: 08:20:00 AM

DEPT.: 43

CASE NUM: 56-2016-00476959-CU-BC-VTA
CASE TITLE: NANEZ VS. GENERAL MOTORS LLC

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Motion - Other (CLM) - Further Discovery Responses From Deft & Request for Sanctions First Set of
CAUSAL DOCUMENT/DATE FILED: Motion to Compel, 09/16/2016

The morning calendar in courtroom 43 will begin at 9 a.m. Cases including *ex parte* matters will not be called prior to 9 a.m. Please check in with the courtroom clerk by no later than 8:45 a.m. If appearing by CourtCall, please call in between 8:35 and 8:45 a.m.

With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you can send an email to the court at: Courtroom43@ventura.courts.ca.gov or send a telefax to Judge DeNoce's secretary, Hellmi McIntyre at 805-477-5894, stating that you submit on the tentative. Do not call in lieu of sending an email or telefax. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

For general information regarding Judge DeNoce and his courtroom rules and procedures, please visit:
<http://www.denoce.com>

The court's tentative ruling is as follows:

Plaintiff moves for an order compelling further responses to Plaintiff's first set of Requests for Production of Documents and monetary sanctions in the amount of \$2,935 against Defendant General Motors, LLC and its attorneys of record. The production demands at issue are nos. 6, 9, 10, 11, 14, 17, 18, 19, 20, 30, 31, 32, 33, 35.

The Court grants the request for judicial notice as to Ex. 1 and 2. Deny judicial notice as to Ex. 3-11.

As to Production Demand Nos. 9, 11, 18-20, and 35 (documents that refer, relate, or pertain to GM's internal policies and procedures), the court overrules Defendant's objections (overbroad, unduly burdensome, confidential proprietary information, etc.) A manufacturer's policies and procedures for complying with the *Song-Beverly Act* may be admissible to show whether a failure to comply with the Act was willful. (See, *Oregel v. American Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, 1105 [Evidence that D adopted internal policies that erected obstacles to the ability of consumers to obtain redress under the act is admissible on the question of willfulness.]) To the extent that Defendant wishes to raise an attorney-client privilege or work-product objection, CCP section 2031.240(c) requires that any such objection provide sufficient factual information to allow the other party to evaluate the merits of the claim of privilege including a privilege log.

As to Production Demand Nos. 6, 10, 14, 17 (case specific documents that refer, relate, or pertain to Plaintiff or the subject vehicle), the Court needs further input from counsel as to whether anything is still outstanding here. In the opposing separate s/m, GM contends it has provided PI with some 714 pages of Bates-stamped documents directly responsive to these requests, including any:

- Service Request Activity Report(s);
- Global Warranty Vehicle Printout(s),
- Incidentally obtained dealer repair orders in GM's possession, custody or control.

However, as noted by PI in its reply, it is unclear from GM's current verified responses whether all responsive documents have been produced, or if GM is withholding responsive documents based on its objections. If the documents previously produced by GM are indeed all of the documents responsive to this group of requests, as GM claims in its opposition, GM's verified responses should indicate that it is complying in full instead of setting forth evasive objections.

Again, as discussed above, GM cannot simply lodge a blanket privilege objection to these production demands without providing sufficient information and/or a privilege log to justify its refusal to produce purportedly privileged documents. PI requests that Def GM be compelled to comply with the code and either withdraw its privilege objections or provide the requisite information for PI to determine whether the privilege objections are valid.

As to Production Demand Nos. 30-33 (documents that refer, relate, or pertain to any vehicle sold by GM of the same year, make, and model), the is persuaded that these documents are relevant. Although *Doppes v. Bentley* (2009) 174 Cal.App.4th 967 is procedurally not on point, in that it is not a discovery scope case but a discovery abuse case, the manufacturer in *Doppes* was ordered by the court and directed by the discovery referee to produce documents evidencing "all service orders on every Bentley Arnage repurchased because of complaints of [the defect] . . . all consumer complaints on every Bentley Arnage involving [the defect] . . . all computer files that summarize customer complaints of [the defect]" This Court rejects Defendant's narrow interpretation of *Doppes* to avoid producing docs. *Doppes* acknowledged the documents demanded as "relevant and properly demanded." (*Doppes* at 977.) As to *Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138, 154, the court held that evidences of other vehicles was relevant and not prejudicial. (*Id.* at 154.)

Documents evidencing the frequency of repurchases and similar complaints in other 2012 Buick Enclave vehicles have a tendency to prove that a widespread problem existed in the 2012 Buick Enclave. This evidence can potentially refute GM's affirmative defenses set forth in its Answer including contributory negligence, unclean hands, assumption of the risk, misuse of product, alteration of product, and unauthorized use of the product. As noted by PI, the widespread existence of similar defects in other 2012 Buick Enclave vehicles makes it less likely that PI caused the defects in the subject vehicle. As such, the documents are relevant to prove the prima facie elements of PI's case.

As to documents evidencing repurchases and similar complaints in other 2012 Buick Enclave vehicles supporting PI's claim for civil penalties, Plaintiff contends that in addition to restitution, it is also entitled to civil penalties if he can prove that Def "willfully" violated the Song-Beverly Act. (CACI 3244.) The opposition does not appear to address this issue. However, as noted in the Reply, in determining what constitutes a "willful" violation of the Song-Beverly Act, California court have previously stated that "[a] decision made without the use of reasonably available information germane to that decision is not a reasonable, good faith decision." (See *Lukather v. General Motors, LLC* (2010) 181 Cal.App.4th 1041, 1051.) Here, GM's purported broad treatment and handling of other similar repurchases and complaints by owners of 2012 Buick Enclave vehicles is relevant to prove that Def had knowledge of widespread defects and non-conformities similar in all 2012 Buick Enclaves, which supports PI's claims for civil penalties. If def GM had known that defects and non-conformities similar to those suffered by PI were common in the 2012 Buick Enclave model, Def should have used that knowledge in promptly offering a repurchase or replacement of PI's vehicle pursuant to the Song-Beverly Act.

Sanctions of \$1,000.00 are imposed against Defendant and counsel jointly, payable within thirty days. Defendant has until January 13, 2017, to comply with the Discovery ruling set forth above.